

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Wanda Colon)
 v.) Crim. No. 3:19-cr-00028-CAR-CH
 US Marshalls)
 William Barr AG)
 Aliceville Warden/Prison)
 FBOP)
 Alabama Governor)

U.S. DISTRICT COURT
N.D. OF ALABAMA

7:20-cv-1096-LCB-JHE

MOTION FOR PRELIMINARY INJUNCTION

Comes Now, Wanda Colon, Plaintiff and pro se prisoner, seeking a Preliminary Injunction against the above listed defendants, where Plaintiff will establish threat of irreparable harm of infection if she remains in Aliceville/BOP custody as the nature of detention facilities made exposure and spread of COVID-19 virus particularly harmful.

1. Plaintiff is a prisoner at SPC Aliceville who has asthma, has a BMI 30+, and has been a smoker for years, making her very vulnerable to the virus. The CDC has listed these 3 underlying conditions as conditions that will see the most complications when contracting the virus.
2. Plaintiff was sentenced to a 24 month sentence where she has 18 months or less left to serve and has served more than 25% of that term. According to William Barr Memorandum of April 3, 2020 is eligible for home confinement. But Aliceville refuses to allow her to transfer to home confinement stating "the new rule is you have to do 50% of your sentence". NOT 25% and have 18 months or less remaining as directed by William Barr.

Argument- Conditions of Confinement

Plaintiff has several underlying illnesses that she faces serious risks to her health in the open bay camp where confined. Where she asks this court to intervene and issue an injunction that Aliceville implement the CARES ACT the way it was written by Attorney General Barr and release to Home Confinement "vulnerable" inmates as herself.

When William Barr and congress signed the CARES ACT there was no specific % percentage you had to complete to qualify as vulnerable.

In considering a motion for preliminary injunction, the Courts have also recognized that health risks to be particularly acute and of constitutional significance for inmates who are elderly or have underlying illnesses as listed in the CDC guidelines. The Eighth and Fourteenth Amendments, For Federal and state inmates, respectively, may well be implicated if defendants can demonstrate that they are being subjected to conditions of confinement that would subject them to exposure to serious (potentially fatal, if the detainee/inmate is elderly, or with underlying medical conditions) illnesses.

It is well-settled that an alleged constitutional violation constitutes irreparable harm. The alleged violation of a constitutional right triggers a finding of irreparable injury. Inmates can establish a due process violation for unconstitutional conditions of confinement by showing that a government official knew, or should have known of a condition that posed an excessive risk to health and failed to take appropriate action. Deliberate indifference can be established by either a subjective or objective standards. Plaintiff can prove deliberate indifference by showing Aliceville's own officers/defendants recklessly failed to act with reasonable care to mitigate the risk that the conditions posed to the inmate even though the defendant officially knew or should have known that the conditions posed an excessive risk to the plaintiffs health or safety. The Supreme Court has recognized that the governments authorities may be deemed deliberately indifferent to an inmates current health problems where authorities ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year, including exposure of inmates to a serious, communicable disease, even when the complaining inmate shows no serious

current symptoms. The Petitioner need not demonstrate that she suffered from serious injuries to show constitutional violations.

Instead, showing that the conditions of confinement pose an unreasonable risk of serious damage to their health is sufficient. In an application for temporary restraining order, the courts, consider that other courts have recognized of the heightened risk to inmates in contracting the COVID-19. Detaining vulnerable individuals without enforcement of appropriate social distancing and without specific measures to protect their delicate health poses an unreasonable risk unreasonable risk of serious damage to their future health, and demonstrates deliberate indifference. Petitioner is in a CAMP with an open bay, bunks line up with only 3 feet distance from another, where it is impossible to social distance, officers come and go from the FCI where the virus is at full speed spreading like wildfire, with no masks or gloves on or social distancing from us inmates. All the chemicals at SPC Aliceville are so watered down it is as if inmates are cleaning with water, making it impossible from keeping the virus from spreading. Inmates work in the kitchen with officers who come and go with no masks or gloves, essential workers walk daily down to the shop and work with officers without masks on themselves or the officer. Petitioner is an essential worker who drives back and forth inmates who are released to go home. She takes them without masks on, as she does not have a mask either. The Plaintiff was issued a cloth mask by the Defendants, but that mask is so big it will not stay on her face, leaving it useless and meaningless to wear. Petitioner submits that the same common areas, showers, computers, phones

and toilets are all used without disinfecting inbetween. See Ex-A
Risk of Death- Irreparable Harm

On March 11, 2020, the World Health Organization declared COVID-19 a global PANDEMIC. Petitioner is at a facility where there has already been 26 confirmed cases and counting. This includes inmates and staff. See Ex-B

The nature of detention centers and prison facilities make exposure and spread of the virus particularly harmful. Jaimie Meyer M.D., M.S., who has worked extensively on infectious diseases treatment and prevention in the context of jails and prisons, recently submitted a declaration in the New York District Court noting that the risk of COVID-19 to people in prison/jail facilities "is significantly higher than in the community, both in terms or transmission, exposure, and harm to individuals who become infected." Meyer Decl. Yelesaca

Wolf, 20 Civ. 1803(S.D.N.Y. Feb. 28,2020), ECF No.42. "It will be impossible to prevent widespread infections inside a facility where the virus is now there because detainees live, sleep, and use the bathroom in close proximity with others, and because behind bars, some of the most basic disease prevention measures are against the rules or simply impossible." Petitioner faces serious risks to health in their confinement. See CDC Corona Virus Centers for Disease Control COVID-19 and Underlying Conditions including "obesity" which trigger higher risk of severe illness from COVID-19; See Fed.R.Evid.201(b) ("The court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; (2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.")

Brickey v. Superintendent, Franklin Corr. Facility, No. 10 Civ.085, 2011 U.S. Dist. LEXIS 24483, 2011 WL 868148, at*2 n.3 (N.D.N.Y. Feb. 17, 2011). A number of courts in several districts have recognized the threat that COVID-19 poses to individuals held in jails and other detention facilities. See United States v. Stephens, No.15 CR. 95, 2020 U.S.Dist.LEXIS 47846, 2020 WL 1295155, at *2(S.D.N.Y. Mar.19, 2020) ("Inmates may be at heightened risk of contracting COVID-19 should an outbreak develope.") The chaos has already begun at Aliceville, prison inmates and employees have already tested positive for the virus. Reduction in population "is in the public interest to mitigate risks imposed by COVID-19" "especially for non-violent offenses" as plaintiff in this case.

Constitutional Violations

Petitioner argues that her continued confinement at SPC/FCI Aliceville where COVID-19 is present and without adequate protection for her health violates due process rights and constitutional rights. The risks of contracting COVID-19 in tightly-confined spaces, especially prisons is now exceedingly obvious. It can no longer be denied that Petitioner who suffers from obesity, an underlying illness, is caught in the mist of a rapidly-unfolding public health crisis. The Supreme Court has recognized that government authorities may be deemed "deliberately indifferent to an inmate's current health problems" where authorities "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering, including "exposure of inmates to a serious, communicable disease," even when "the complaining inmate shows no serious current symptoms." Helling v. McKinney, 509 U.S. 25, 33, 113 S.Ct. 2475,125 L.Ed. 2d 22 (1993). Respondents can exhibit and exhibit deliberate indifference to Petitioner's medical needs. The spread of COVID-19 is measured in a

matter of a single day-not weeks, months, or years-and Respondents continue to ignore the conditions of confinement that will likely cause imminent, life threatening illness. Respondent can continue arguing that they are taking certain measures to prevent the spread of the virus; screening inmates; isolating any who report symptoms, conducting video court appearances with only one inmates in the room at a time; providing soap and hand sanitizer to inmates, and increasing the frequency and intensity of cleaning facility. These measures are patently insufficient to protect Petitioner. Respondent can not represent that the detention facility is in a position to allow inmates to remain six feet apart from one another, as recommended by the CDC. Confining vulnerable individuals such as Petitioner without enforcement of appropriate social distancing and without specific measures to protect their delicate health "poses an unreasonable risk of serious damage to their future health," Phelps, 308 F.3d at 185 (internal quotation marks and citation omitted), and demonstrates deliberate indifference.

Therefore the Petitioner is likely to succeed on the merits of her TRO and Preliminary injunction.

The equities and public interest weigh heavily in Petitioner's favor. Petitioner faces irreparable harm, to her constitutional rights and her health. Second the potential harm to Respondant is limited. Petitioner would be converting her place of confinement to "home confinement" instead of continued incarceration at facility where irreparable harm is likely. The public interest favors Petitioner's release. Petitioners in the highly unusual circumstances posed by COVID-19 crisis, continued detention of aging or vulnerable detainees does not serve the public's interest. See Declaration of Dr. Homer Venters, 5:19 Civ. 1546, ECF No. 81-11 (C.D. Cal. Mar. 24, 2020) .

To the contrary, public health and safety are best served by rapidly decreasing the number of individuals detained in confined, unsafe conditions. See e.g., Grand River Enterprises Six Nations, Ltd. v Pryor, 425 F.3d 158, 169 (2nd Cir. 2005)(referring to public health as a significant public interest).

Relief Demanding

Petitioner seeks home confinement from the FBOP facility, to serve the remainder of her sentence on home confinement, due to the unsafe conditions during this global PANDEMIC at the facility where she is confined.

Petitioner prays this court grant her preliminary injunction and allow her to serve the remainder of the sentence imposed on home confinement as directed by William Barr. Respectfully submitted this 26th day of July, 2020

Wanda Colon
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FROM: [REDACTED]
TO: [REDACTED]
SUBJECT: Yours
DATE: 06/14/2020 09:06:01 PM

CBS 42

Coronavirus raises concerns at Aliceville Federal Prison
Tim Reid

ALICEVILLE, Ala. (WIAT) The coronavirus is causing concerns in local prisons. Some corrections officers at the Aliceville Federal Prison for Women are worried about the virus spreading to staff and prisoners.

Union representative Terrence Windham who is a corrections officer and an Aliceville city councilman says staff members and other guards are scared about the possibility of the virus spreading behind bars.

"Mainly my concerns are that we don't have equipment including cleaning supplies and testing supplies," Windham said. "If someone does have Coronavirus that they are being tested and isolated so it won't spread to the inmate population and most importantly to the staff members."

Windham believes the prison does not have enough cleaning supplies and face masks.

"It is their responsibility to make sure we have all the cleaning supplies that we need," he said. "The standard cleaning supplies the bureau uses is a little watered down compared to your average Clorox or Lysol would be. So those are the concerns we have as far as trying to clean up this virus as well."

Justin Long says the Aliceville prison has more than enough supplies to last. Long is the Public Affairs Officer for the Federal Bureau of Prisons.

"All cleaning, sanitation, and medical supplies have been inventoried at the Bureau of Prisons' 122 facilities, including FCI Aliceville, and an ample amount of supplies are on hand and ready to be distributed or moved to any facility as deemed necessary," Long said. "Inmates are encouraged to wash their hands frequently with soap and water in accordance with the CDC's guidance. There is no shortage of hand soap for either staff or inmates."

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Ex-A

WATCH

Ten COVID-19 cases reported in one Alabama federal prison

by Stephen Gallien

Tuesday, May 12th 2020

St. Clair Correctional facility (ABC 33/40)

ALICEVILLE, Ala. (WBMA)

The Bureau of Federal Prison is dealing with nearly a dozen COVID-19 cases inside it's facility in Aliceville.

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Newly released information by the prison system shows six inmates and four staff members tested positive for the virus. Three prisoners and three staff members have recovered.

RELATED >>> More coronavirus news from ABC 33/40

The prison in Pickens County houses a total of nearly 1,400 inmates.

Among the 139,776 federal inmates, 3,379 have tested positive for COVID-19. There have been 49 federal inmate deaths.

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Ex-B

12 COVID-19 cases reported in Alabama federal prisons

Posted May 11, 2020

FCI Aliceville

The Federal Correctional Institution at Aliceville has seen the majority of Alabama's cases in federal prisons.

By William Thornton | wthornton@al.com

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Federal prisons in Alabama have seen a total of 12 coronavirus cases among inmates and staff, according to the Federal Bureau of Prisons.

As of Monday, the bureau shows that the majority of cases are at the Federal Correctional Institution in Aliceville.

The Pickens County facility, a medium-security installation for women, has reported 6 inmates and four staff members as testing positive for COVID-19. There is a total of 1,395 inmates at the facility, according to its website.

At Keeton Corrections of Birmingham, a contracted residential reentry center, one inmate has tested positive. The Federal Prison Camp in Montgomery reports one staff member as testing positive.

The Bureau of Prisons reports that 3,379 inmates have tested positive nationally out of a total prison population of more than 139,000 in 11,258 facilities, while 279 staff members, out of about 36,000, have been infected. There have been 49 federal inmate deaths attributable to COVID-19, with most of those at five facilities in California, Texas, North Carolina, Ohio and Louisiana. There have been no deaths among staff members, the bureau says.

Currently, 656 inmates and 279 staff have recovered.

Information from the bureau related to COVID-19 can be found [here](#).

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EX-B

C E R T I F I C A T E O F S E R V I C E

This is to certify, under penalty of perjury under the laws of the United States of America pursuant to 28 U.S.C. §1746, that I have served a true and correct copy of the foregoing:

100 motion for preliminary injunction

2 exhibits

upon the following address(es) by placing same in a sealed envelope, bearing sufficient postage for delivery via US Postal Service First Class Mail, to:

Hugo Black Court House
Court Clerk
1729 5th Ave North
Birmingham AL. 35203

Wanda J. Colon
Wanda Colon #72513-019
SPC Aliceville
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Aliceville, AL. 35442

and deposited it in the postal box provided for inmates on the grounds of the Federal Correctional Institution, Aliceville, AL (SPC) on this 26th day July, 2020

Litigation is deemed FILED at the time it was delivered to prison authorities.
See Houston v Lack 487 US 266, 101 L Ed 2d 245, 108 S Ct 2379 (1988)

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